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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/656,523	09/05/2003	Richard James McDermott	21990-RA	8049	
30184	7590 10/12/2006		EXAMINER		
MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C. 1899 POWERS FERRY ROAD			DONNELLY, JEROME W		
SUITE 310			ART UNIT	PAPER NUMBER	
ATLANTA, GA 30339			3764		
	DATE MAILED: 10/12/2006		5		

Please find below and/or attached an Office communication concerning this application or proceeding.

## Diffice Action Summary    Total MalLing DATE of this communication appears on the cover sheet with the correspondence address		Application No.	Applicant(s)					
Examiner Jerome W. Donnelly 3764  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE  MICHEVER IS LONGER. FROM THE MAILING DATE OF THIS COMMUNICATION.  - Drawsons of time may be available under the processors of 37 CFR 1.136(b). Inno event, however, may a kept be timely fixed.  - If NO period to reply is septicle above, the maximum standory period will apply and will opine SIX (MONTHS from hemila) date of this communication.  - If NO period to reply is deputed above, the maximum standory period will apply and will opine SIX (MONTHS from hemila) date of this communication.  - If NO period to reply is deputed above, the maximum standory period will apply and will opine SIX (MONTHS from hemila) date of this communication.  - If NO period to reply is supplied above, the maximum standory period will apply and will opine SIX (MONTHS from hemila) date of this communication.  - If NO period the proper standors are supplied to the communication to become ABMODNED (33 U.S.C. § 133).  - If NO period the advanced period to reply will, by standor, cause the application to become ABMODNED (33 U.S.C. § 133).  - Status  1) Responsive to communication(s) filed on								
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WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Estatesions of time may be available under the provision of 37 CFR 1.13(b). In no event, however, may a reply be timely filed after SEX (6) MONTHS from the mailing date of this communication and stage is SEX (6) MONTHS from the mailing date of this communication.  Failurs to reply received by the Office later than three months after the mailing date of this communication.  Failurs to reply within the set or extended period for righy will. by stables, cause the application to become ARANDOFD 13 U. S. C. § 133).  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent the mailing mailing that of this communication, even if timely filed, may reduce any earned patent the mailing mailing that of this communication, even if timely filed, may reduce any earned patent the mailing mailing mailing that of this communication, even if timely filed, may reduce any earned patent the mailing mailin	The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence addr	ess				
1) Responsive to communication(s) filed on 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims 4) Claim(s)	A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period w  - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be timulated the sound and will expire SIX (6) MONTHS from cause the application to become ABANDONE!	I. tely filed the mailing date of this common (35 U.S.C. § 133).					
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Application/Control Number: 10/656,523

Art Unit: 3764

Claims 16, 17, 22, 27, 28 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Woolley.

Woolley discloses a device comprising: metal bottomless wall procluding entry which is positionably over a recessed area, said device being circular in shape.

In regard to claim 28, "adapted to receive fails to further limit the claim by adding additional elements to the claims

In regard to claim 40, Woolley discloses a device comprising: a retaining wall selected from a group comprising a retaining wall comprising a plurality of through holes formed on an upper peripheral edge.

Claims 1, 9, 14 rejected under 35 U.S.C. 102(a) as being anticipated by Wiley.

In regard to claims 1 and 9 Wiley discloses a device comprising a corrugated segmented wall, wherein said wall is bottomless, said wall being removably <u>attached</u> to supporting plates (26).

In regard to claim 14, note the safety net of Wiley fig. 1.

Claims 1, 6, 7 and 8 rejected under 35 U.S.C. 102(b) as being anticipated by Raasch et al 6071213.

Raasch et al disclose a device comprising a segmented wall (30) and support rings 14 and 16.

In regard to claim 8, note Fig. 5. Claims 1, 4-13, 17, 18, 21, 23, 26, 29, 31-33, 35, 37 and 38 rejected under 35 U.S.C. 102(b) as being anticipated by Donald Gordon et al. See Fig. 2.

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Claims 1 and 15 rejected under 35 U.S.C. 102(b) as being anticipated by Jewell et al.

Jewell et al discloses a device comprising a segmented wall 38, 40, 46, 44, 48 etc. and padding. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolley in view of Wiley.

Woolley discloses a device as claimed in claims 1-3 and 17-20 the teaching or a segmented corrugated wall.

Wiley teaches manufacturing retaining walls of segmented corrugated material. Given the above teaching the examiner notes that it would have been obvious and well known in the art to manufacture the wall member of Woolley of segmented corrugated material selected from the claimed group as disclosed in claim 3.

As to the device being positionable over a recessed area, the device of Woolley as broadly claimed is capable of being positioned over a recessed area.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolley in view of Wiley and Jewell et al.

The examiner notes that it would have been obvious to provide the device of Woolley modified with padding in view of the safety padding of Jewell al.

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Claims 31, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd et al 5299989.

Boyd et al discloses a device comprising a circular wall, absent a bottom, which is positionable in a body of water (recessed area), said wall having a mat tensioned over said wall.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

JEROME DONNELLY
PRIMARY EXAMINER

Jerome Donnelly